

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
Implementation of the Local Competition)	
Provisions in the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
Inter-Carrier Compensation)	CC Docket No. 99-68 /
For ISP-Bound Traffic)	
)	
)	

REPLY COMMENTS OF THE
COMMERCIAL INTERNET EXCHANGE ASSOCIATION

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The Commercial Internet eXchange Association (CIX) is a trade association that represents 125 Internet Service Provider (ISP) networks, which handle approximately 75 percent of the United States' Internet traffic and much of the world's backbone Internet traffic as well.¹ CIX is the world's oldest trade association of ISPs and Internet-related businesses, having been established in 1991 to provide the first commercial access point to the Internet backbone. CIX, by its attorneys, files these comments in response to the Commission's *Public Notice*, issued on

¹ The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

June 23, 2000,² requesting comment on the issues identified by the United States Court of Appeals for the District of Columbia Circuit in its decision vacating and remanding the Commission's *Reciprocal Compensation Order*.³

CIX maintains that cost-based reciprocal compensation remains an important regulatory-based mechanism that ensures equity among carriers sharing responsibility for the transmission and termination of local calls. CIX agrees that dial-up ISP-bound calls are local in nature and subject to reciprocal compensation, so that carriers that terminate ISP-bound traffic are fairly compensated in the same manner as they would be for terminating any other form of local traffic, regardless of the context of call initiation or termination. The Commission has consistently supported inter-carrier compensation without regard to the context of the local traffic, and should continue to do so.

CIX is deeply concerned that the termination of reciprocal compensation for ISP-bound traffic would have a detrimental impact on Internet users and ISPs. In particular, residential ISP subscribers may be the most seriously affected, because of the great likelihood that the elimination of reciprocal compensation for ISP-bound traffic will result in an increase in monthly dial-up Internet access fees. In addition, the elimination of reciprocal compensation for ISP-bound traffic will handicap independent ISPs by severely curtailing their access to competitive local exchange carrier (CLEC)-provided telecommunications services.

The emergence of wireless communications in the 1980s, and the increasing exchange of calls between wireless and wireline carriers, precipitated an earlier inquiry into inter-carrier

² *Comment Sought on Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the D.C. Circuit*, CC Docket Nos. 96-98, 99-68, Public Notice (rel. Jun. 23, 2000) ("Public Notice").

³ *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000), vacating *Intercarrier Compensation for ISP-Bound Traffic*, Declaratory Ruling, 14 FCC Rcd 3689 (1999) ("Reciprocal Compensation Order").

compensation.⁴ Wireless carriers initiate many more calls than they terminate, so they were faced with large inter-carrier payments for wireline call termination. Some wireless companies even suggested that the inter-carrier compensation rate should be zero, so they would not have to pay for wireline call termination at all. The incumbent local exchange carriers (ILECs), however, argued vigorously for reciprocal compensation payments for local traffic termination, arguing that the absence of such compensation was an unconstitutional taking under the Fifth Amendment.⁵ The Commission ultimately agreed with the ILECs' arguments, and ordered reasonable compensation for the transport and termination of calls among wireless and wireline networks. Even now, this traffic is unbalanced, terminating much more often on the wireline network, enabling ILECs to collect substantial reciprocal compensation payments from wireless carriers.

In 1996 when the Commission addressed inter-carrier compensation pursuant to the 1996 Act,⁶ the ILECs again vigorously opposed zero reciprocal compensation (or "bill and keep").⁷

⁴ *Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services*, Second Repor, 9 FCC Rcd 1411 (1994).

⁵ See Letter of Prof. Richard Epstein for USTA, May 16, 1996, filed in CC Docket No. 95-185.

⁶ See 47 U.S.C. § 251(b)(5).

⁷ "[A] regulatory mandated price of zero – by any name- would violate the Act, the Constitution, and sound economic principles." See *id.* Bell Atlantic also noted that reciprocal compensation would apply to ISP-bound traffic. See Reply Comments of Bell Atlantic in CC Docket 96-98, at 20 (1996).

Again, the Commission agreed with the ILECs and required the establishment of cost-based reciprocal compensation.⁸

In the *Local Competition Order*, the Commission determined that reciprocal compensation costs ranged from “\$0.002/minutes of use (MOU) to \$0.004/MOU.”⁹ That Order, however, was stayed shortly after it was issued and its findings regarding appropriate reciprocal compensation costs were not implemented. Instead, possibly believing that they would terminate more traffic than the CLECs would, the ILECs negotiated contracts with higher reciprocal compensation rates, usually around \$0.008 - \$0.009/MOU. The resulting Internet boom, however, has benefited CLECs more than the ILECs anticipated. Thus, rather than benefiting from a perceived imbalance, causing substantial reciprocal compensation payments, as the ILECs have from wireline carriers, the ILECs find themselves paying reciprocal compensation to CLECs for terminating ISP-bound traffic.

Notwithstanding their position with respect to wireless-wireline reciprocal compensation, ILECs now argue that reciprocal compensation is not fair with respect to ISP-bound traffic (as opposed to any other sort of local traffic), because many ISPs are CLEC customers, and CLECs serving ISPs tend to terminate more traffic than they initiate. The ILECs also maintain that this

⁸ See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, at para. 1112 (1996).

⁹ *Id.*, at para. 1060.

imbalance of payments does not reflect the cost of terminating ISP-bound traffic and constitutes an improper subsidy from the ILECs to the CLECs. Consequently, the ILECs now support permanent exception of ISP-bound traffic from reciprocal compensation arrangements.

This is neither consistent, nor correct. Reciprocal compensation rates that accurately reflect the cost of terminating traffic are not a subsidy but are a reimbursement for incurred costs. Excepting ISP-bound traffic from reciprocal compensation because the current compensation rates may not accurately reflect costs would amount to throwing the baby out with the bath water. When one telephone company hands off a telephone call to another telephone company, both incur costs. The specific type of telephone call does not matter, the costs relate to the transport from the hand-off point to the terminating switch, plus the switching and delivery of the call to the called number. The identity of the party at the called number, whether ISP or another type of business, has no bearing upon the justification for fair compensation of the costs incurred by the terminating local exchange carrier, which may be an ILEC or a CLEC.

Certainly, the ILECs would like to avoid paying reciprocal compensation to CLECs. But the resulting imbalance stems from the ILECs' domination of the residential market, not asymmetric regulation. Thus, if the Commission must take action because the reciprocal compensation rates that the ILECs negotiated do not accurately reflect the cost of terminating ISP calls, such action should be limited to restoring equity to the rates not eliminating reciprocal compensation altogether.

Moreover, excepting ISP-bound traffic from reciprocal compensation will substantially harm the ISPs and their customers. Barring reimbursement for the costs that CLECs incur for

terminating ILEC calls to ISPs, while leaving reciprocal compensation arrangements intact for all other businesses (regardless of the relative volume of incoming and outgoing traffic), unfairly and inaccurately stigmatizes ISP-bound traffic. ISPs would suddenly become very unattractive customers from the carrier's point of view. This would handicap ISPs by preventing them from obtaining competitively-priced services from CLECs who would not be adequately compensated for the cost of terminating ISP-bound calls. Of course, such charges are anathema to Internet users.

Furthermore, the acute imbalance of incoming-to-outgoing calls relating to Internet traffic is only temporary, and will be mitigated by the growing integration of Internet and voice telephone services. For instance, automobile and real estate sales are becoming increasingly Internet-oriented, stimulating local traffic when local sales offices call prospective clients in response to E-mail inquiries generated from the prospective client's initial interaction with the Internet. The growth of such services will restore balance to Internet-related local traffic volumes. In addition, "voice portals" are being introduced that use voice recognition technology to permit Web access through ordinary telephones. Thus, distinguishing ISP-bound traffic as something different from other forms of local traffic in order to zero-out a temporary reciprocal compensation imbalance will lead to substantially more complex problems as these hybrid services penetrate the market.

The equitable way to mitigate the current reciprocal compensation imbalance is through cost-based reciprocal compensation rates and to encourage local competition. If the market shares of ILECs and CLECs serving consumers and ISPs were comparable, neither ILECs nor

CLECs would be liable for substantial reciprocal compensation payments. The fact that ILECs pay substantial reciprocal compensation to CLECs is a symptom of the ILEC's domination of the residential market, which CLECs are only beginning to penetrate. When ILECs and CLECs share that market on the same scale, reciprocal compensation will not be an issue. The symptom will go away with its cause. Until then, it will do harm to ISPs, and to the public interest in ubiquitous and inexpensive Internet access and vibrant competition in the ISP industry, to taint ISP-bound traffic by excepting it from reciprocal compensation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mary W. Malone, certify that I have, on this 4th day of August, 2000, caused a true and correct copy of the foregoing "Comments of The Commercial Internet Exchange Association" to be hand delivered to:

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